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IN THE

Supreme Court of the United States

October Term, 1963

No. 673

PAN-AMERICAN LIFE INSURANCE COMPANY,

Petitioner,

v.

AUGUSTIN GOYTISOLO RECIO,

Respondent.

Petition for a Writ of Certiorari To the District Court of Appeal of Florida, Third District

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PETITION FOR REHEARING

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Attorneys for Petitioner

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PETITION FOR REHEARING

Petitioner, Pan-American Life Insurance Company, presents this, its petition for rehearing, and respectfully shows the Court the following:

I.

This petition for rehearing is directed to the Court's order of June 22, 1964, denying certiorari in the above captioned case. The petition is presented pursuant to Supreme Court Rule 58(2) and is accompanied by a certificate of good faith as required by said Rule.

II.

The intervening circumstances of substantial or controlling effect relied on for reconsideration of the Court's order denying certiorari are as follows:

1. At the present time, a large number of Cuban insurance cases are pending in various state and federal courts on both the trial and appellate levels. In addition, during this Court's summer recess, petitions for certiorari will be presented to the Court in several cases which have already been concluded in state appellate courts.

2. A conflict of decisions arising after initial denial of certiorari and before denial of a petition for rehearing is a recognized basis for granting a petition for rehearing in this Court. E.g., *Sanitary Refrigerator Co. v. Winters*, 280 U.S. 30.

3. At the present time, there are a number of Cuban insurance cases pending in the United States Court of Appeals for the Fifth Circuit. In two of these cases, this Court, on April 6, 1964, granted certiorari, vacated the Fifth Circuit's judgments, and remanded "for further consideration in light of Banco Nacional de Cuba v. Sabbatino". *Pan-American Life Insurance Co. v. Pedro Menendez Rodriguez*, 12 L.Ed.2d 82; *Aetna Insurance Co. v. Pedro Menendez*, 12 L.Ed.2d 82.

In the normal course of events, the Fifth Circuit's opinion on remand will be rendered before this Court reconvenes next fall. The issues in the Fifth Circuit cases

are such that its opinion will, in all probability, pass on the same issues raised by the instant cases. Moreover, the Court's action in remanding for reconsideration in the light of *Sabbatino* is a strong indication that the Fifth Circuit should and will take a different view from that taken by the Florida courts below.

Justice will not prevail if a conflict of decisions arises prompting this Court to grant certiorari in the Fifth Circuit cases after it has lost jurisdiction in the present case.

4. In addition to the *Rodriguez* cases, the Fifth Circuit also has four other Cuban insurance cases pending on appeal from the Southern District of Florida. Your petitioner, Pan-American Life Insurance Company, is appellant in three of these cases and American National Insurance Company, is appellant in the fourth. Appellants have filed their briefs in the cases and a Fifth Circuit opinion may be handed down before the instant petition is acted on by this Court.

5. The judicial decisions which have and are being rendered in this area are so numerous and varied in their approach that it is impossible to predict what the judicial climate will be when this Court again sits in the fall. The state of the law changes almost daily and will continue to do so until this Court lays the matter to rest. Accordingly, your petitioner respectfully suggests that justice will be best served by a reconsideration of these cases in the fall in the light of what transpires during the summer.

III.

For the foregoing reasons, it is respectfully submitted that this petition should be granted.

Respectfully submitted.

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and

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By _____

CERTIFICATE OF SERVICE

I, SAM DANIELS, of counsel for PAN-AMERICAN LIFE INSURANCE COMPANY, the petitioner herein, and a member of the Bar of the Supreme Court of the United States, hereby certify that a copy of the foregoing Petition for Rehearing was served on CAREY, TERRY, DWYER, AUSTIN, COLE & STEPHENS, Attorneys for Respondent, by depositing same in a United States Mail Box with first class postage prepaid, addressed to them at their office address, 650 Seybold Building, Miami, Florida 33131, on this day of July, 1964. I further certify that two copies of the foregoing Petition for Rehearing were served on the HONORABLE ARCHIBALD COX, Solicitor General, by depositing same in a United States Mail Box with first class postage prepaid, addressed to him at his office address, Department of Justice, Washington, D. C., on this day of July, 1964.

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